

ORIGINAL

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14 UNITED STATES DISTRICT COURT
15 CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION
16

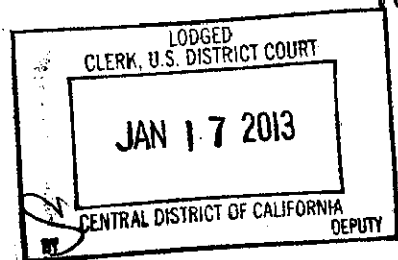
17 United States ex rel. Nyoka Lee, et
18 al.,

19 Plaintiff,

20 vs.

21 Corinthian Colleges Inc., et al.,

22 Defendants.



Case No. 07-cv-01984 PSG (MANx)

27 **DECLARATION OF ACHYUT J.
28 PHADKE IN SUPPORT OF
DEFENDANTS CORINTHIAN
COLLEGES INC., DAVID MOORE,
AND JACK D. MASSIMINO'S
MOTION TO DISMISS**

[Notice of Motion and Motion to Dismiss
with attached Memorandum of Points and
Authorities; filed concurrently herewith]

Judge: Honorable Philip S. Gutierrez
Courtroom: 880
Date: March 11, 2013
Time: 1:30 p.m.

EXHIBITS G-K FILED UNDER SEAL

1 I, Achyut J. Phadke, hereby declare:

2 1. I am an attorney in the law firm of Munger, Tolles & Olson,
3 LLP, counsel of record for Defendants Corinthian Colleges Inc. (the "School") and
4 David Moore and Jack D. Massimino (the "Individual Defendants"). I am an
5 attorney duly admitted to practice in the State of California and before this Court in
6 the above-captioned matter. I have personal knowledge of the matters set forth
7 herein and if called upon to do so, I could and would testify competently thereto
8 under oath.

9 2. I make this declaration in support of the School and Individual
10 Defendants' Rule 12(b)(1) Motion to Dismiss.

11 3. Attached hereto as Exhibit A is a true and correct copy of
12 excerpts of the transcript of the December 17, 2012 deposition of Relator Nyoka Lee
13 ("Lee Deposition").

14 4. Attached hereto as Exhibit B is a true and correct copy of
15 excerpts of the transcript of the December 18, 2012 deposition of Relator Talala
16 Mshuja ("Mshuja Deposition").

17 5. Attached hereto as Exhibit C is a true and correct copy of a
18 document entitled "Privilege Log," electronically mailed by Relators to the School
19 and Individual Defendants on December 10, 2012.

20 6. Attached hereto as Exhibit D is a true and correct copy of a
21 document entitled "Plaintiff's Initial Disclosures," electronically mailed by Relators
22 to the School and Individual Defendants on September 10, 2012.

23 7. Attached hereto as Exhibit E is a true and correct copy of
24 "Relator Nyoka Lee's Objections and Responses to Defendants Corinthian Colleges,
25 Inc., David Moore, and Jack D. Massimino's Interrogatories to Relator Nyoka Lee –
26 Set One, Dated November 9, 2012 (7 Items)," electronically mailed by Relators to
27 the School and Individual Defendants on December 10, 2012.

28 8. Attached hereto as Exhibit F is a true and correct copy of

1 "Relator Talala Mshuja's Objections and Responses to Defendants Corinthian
2 Colleges, Inc., David Moore and Jack D. Massimino's Interrogatories to Relator
3 Talala Mshuja – Set One, Dated November 9, 2012 (7 Items)," electronically mailed
4 by Relators to the School and Individual Defendants on December 10, 2012.

5 9. Attached hereto as Exhibit G is a true and correct copy of
6 Exhibit 5 to the Lee Deposition.

7 10. Attached hereto as Exhibit H is a true and correct copy of
8 Exhibit 6 to the Lee Deposition.

9 11. Attached hereto as Exhibit I is a true and correct copy of
10 Exhibit 7 to the Lee Deposition.

11 12. Attached hereto as Exhibit J is a true and correct copy of
12 Exhibit 8 to the Lee Deposition.

13 13. Attached hereto as Exhibit K is a true and correct copy of
14 Exhibit 13 to the Lee Deposition.

15 I declare under penalty of perjury under the laws of the United States
16 and the State of California that the foregoing is true and correct.

17 Executed on January 14, 2013, at San Francisco, California.

18
19 /s/ Achyut J. Phadke
20 Achyut J. Phadke
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EXHIBIT A

IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

UNITED STATES OF AMERICA,
Ex Rel. NYOKA LEE and
TALALA MSHUJA,

Plaintiff,

vs.

CORINTHIAN COLLEGES, INC.; ERNST &
YOUNG, LLP; DAVID MOORE; and
JACK D. MASSIMINO,

Defendants.

No. CV-07-01984
PSG (MANx)

Videotaped deposition of NYOKA J. LEE,
Volume I, taken on behalf of the Defendants, before
Kimberly Reichert, Certified Shorthand Reporter No.
10986 for the State of California, with principal
office in the County of Orange, commencing at 9:07
a.m. on Monday, December 17, 2012, located at
Corinthian Colleges, Inc., 6 Hutton Centre Drive,
Santa Ana, California.

1 schools and stuff like that, you know, like
2 alternative schools. So I guess that would be for
3 profit.

4 Q What do you mean by "alternative schools"?

5 A Oh, they have schools that are like
6 schools for students who don't do well in academic
7 settings. And they set up schools, alternative
8 schools for their training, hands-on training in
9 different areas.

10 Q And were these high school students --

11 A Yes.

12 Q -- that attended the schools?

13 A Uh-huh.

14 Q Okay. Other than --

15 A Yes.

16 Q Other than this consulting work that you
17 did with alternative schools from time to time prior
18 to 1999, did you have any other work that you did in
19 the education sector before 1999?

20 A Let's see. I can't remember anything.

21 Q So let's talk about your employment at
22 Corinthian. You started there in 1999?

23 A Uh-huh.

24 Q Do you recall what month you started?

25 A Well, let's see. I think it was at the

1 beginning of that year.

2 Q Okay. And in what capacity were you
3 employed in 1999 at Corinthian?

4 A I was employed as an independent test
5 proctor.

6 Q What were your responsibilities in that
7 position?

8 A To test students who were coming into the
9 school to enroll and get an education.

10 Q Did you have any other interaction with
11 the students other than proctoring the exams?

12 A No.

13 Q So you had no responsibility for
14 recruiting them to the school?

15 A No.

16 Q Is that right?

17 A Not as a proctor, no.

18 Q Okay. And how were you paid as a test
19 proctor?

20 A As an independent consultant.

21 Q So did you have an independent contract
22 with the school?

23 A Yes, I did.

24 Q And what -- what was your pay based on?
25 Was it based on an hourly rate or how were you paid?

1 A I was paid hourly.

2 Q So the only thing your compensation
3 depended on as a test proctor was how many hours you
4 worked; is that right?

5 A Yes.

6 Q It didn't depend on how many students
7 passed the test; is that right?

8 A That's correct.

9 Q And it didn't depend on whether they
10 enrolled in the school; is that correct?

11 A That's right. Correct.

12 Q Did you receive any bonuses during the
13 time that you worked as a test proctor?

14 A No, I did not.

15 Q How long did you work as a test proctor
16 for the school?

17 A Approximately nine months.

18 MS. YOUNG: I'm handing you what we'll mark as
19 Exhibit 1.

20 (Defendants' Exhibit 1 was marked for
21 identification by the deposition officer and is
22 bound under separate cover.)

23 BY MS. YOUNG:

24 Q Ms. Lee, what I just handed you is a
25 document titled "Independent Contractor Service

1 Agreement."

2 And if you turn to the third page, under
3 the signature line for "Contractor," is that your
4 signature there?

5 A This page (indicating)?

6 Q Correct.

7 A Yes, it is.

8 Q And did you sign this document on
9 November 19th, 1999?

10 A Yes, I did.

11 Q And is this --

12 A I thought it was the beginning of that
13 year. I see it's 11/99.

14 Q Is this when you commenced your employment
15 with Corinthian, in November of 1999?

16 A I believe so, yes.

17 MR. LEVY: Can you give her a minute to look
18 through it?

19 BY MS. YOUNG:

20 Q Take a minute to look through the
21 document, Ms. Lee.

22 A Okay. Yes. Okay.

23 Q Okay. And this is the agreement that set
24 out the terms of your employment as an independent
25 test proctor with the school?

1 A Yes.

2 Q At what location did you work as a test
3 proctor for the school?

4 A San Francisco.

5 Q Did you work as a test proctor for the
6 school in any other location?

7 A For this school or --

8 Q For Corinthian.

9 A No, I did not.

10 Q Okay. And then you think you were in this
11 position for about nine months?

12 A Yes.

13 Q What did you do next?

14 A Well, I got recruited into the admissions
15 department.

16 Q Okay. Who recruited you?

17 A Cary Kaplan, who was the director of
18 admissions at that time.

19 Q And is this again at the San Francisco
20 campus?

21 A Yes.

22 Q Did you join the admissions department at
23 the San Francisco campus?

24 A Yes.

25 Q When did you do that?

1 A What month or --

2 Q If you can recall.

3 A I think it was August.

4 Q In August of what year?

5 A So this was '99. So that would have been
6 2000. From 11 to -- to August. I think that's nine
7 months, isn't it?

8 Q Uh-huh.

9 A Yes.

10 MS. YOUNG: Well, I tested your memory. I have
11 a document here we can look at that nails it down,
12 but let's see. We'll mark this as Exhibit 2.

13 (Defendants' Exhibit 2 was marked for
14 identification by the deposition officer and is
15 bound under separate cover.)

16 THE WITNESS: Thank you.

17 BY MS. YOUNG:

18 Q So take a moment to look at this document.
19 This is a letter dated August 8th of 2000 titled
20 "Confirmation of employment." And at the bottom it
21 says "Accepted by" and there's a signature.

22 Is that your signature at the bottom?

23 A Yes, it is.

24 Q And it says here that -- in the first
25 paragraph you can see it congratulates you on your

1 new position at Bryman College.

2 And it says, "Your starting date" -- at
3 the end of that paragraph it says, "Your starting
4 date will be August 14th, 2000."

5 Does that sound about right?

6 A Uh-huh, it does. Thank you.

7 Q Okay.

8 A Or should I say "yes."

9 Q I take it you read this letter before you
10 signed it?

11 A Yes.

12 Q Is that your practice, you read through
13 documents before you sign them?

14 A Yes, it is.

15 Q And you understood that signing the letter
16 would indicate your agreement with what was in the
17 letter; correct?

18 A Yes.

19 Did I miss something? Hopefully --

20 Q No, I'm just --

21 A Oh, okay.

22 Q I'm asking for your thoughts in signing
23 the letter.

24 A Yes, I signed it. Mr. Plant gave it to
25 me.

1 Q Okay. And it says here in the last
2 paragraph, "Your signature below will acknowledge
3 that there have been no representations by this
4 company or its agents or any other agreements
5 regarding your employment that are not reflected in
6 this agreement."

7 Do you see that?

8 A Yes, I do.

9 Q You read that before you signed it; is
10 that right?

11 A Yes.

12 Q And that was an accurate statement as of
13 the date that you signed that letter --

14 A Yes.

15 Q -- correct?

16 Okay. And what was your title when you
17 were hired into the admissions department?

18 A Campus admissions rep.

19 Q What were your responsibilities in that
20 position?

21 A My responsibilities were to recruit
22 students, motivate them to come to school -- come to
23 the school, interview them and get them tested if
24 they wanted to go to school and to encourage them to
25 meet with financial aid, see if they qualified, and

1 also give them a tour of the school, and enroll
2 them. Make sure they started on time, they stayed
3 in school until they graduated.

4 Q So it wasn't just to recruit them and get
5 them into -- in the door; right, you had continuing
6 responsibilities to these students?

7 A Yes, I did.

8 Q Okay. Was career guidance one of those
9 responsibilities?

10 A Sorry?

11 Q Was providing them with career guidance
12 one of those responsibilities?

13 A Well, they didn't say I was supposed to do
14 that, but I did it. You know, I provided them with
15 career guidance and encouraged them to continue
16 their education.

17 Q Okay. Did you have any responsibilities
18 as a campus admissions representative for
19 supervising other admissions representatives?

20 A Well, that wasn't in my contract, but I
21 did it because I was good at my job and Cary Kaplan
22 trusted me and he wanted me to do it.

23 Q As a campus admissions representative,
24 were you ever in a position to fill out a formal
25 performance evaluation of other admissions

1 representatives?

2 A No, I was not.

3 Q So supervising other admissions
4 representatives may have been something you did, but
5 it wasn't officially part of your job description?

6 A No. I wasn't really supervising them. I
7 was just being an example for them.

8 Q Okay. And how long did you work as an
9 admissions representative on the San Francisco
10 campus?

11 A For about six years.

12 Q Let's see if we can take a look at some
13 documents to maybe clear up the work history a
14 little bit. I realize a lot of this is in the past.

15 A Uh-huh.

16 Q And I'm not trying to trick you. I have
17 some documents that can maybe help us get a clear
18 chronology here.

19 A Okay. Great.

20 MS. YOUNG: I'm sorry. I keep bumping you.

21 THE VIDEOGRAPHER: That's okay.

22 MS. YOUNG: I'm handing you what we'll mark as
23 Exhibit 3.

24 (Defendants' Exhibit 3 was marked for
25 identification by the deposition officer and is

1 bound under separate cover.)

2 BY MS. YOUNG:

3 Q And I'd ask you to hold on to it. We
4 might come back to it again a little later. Oops.
5 Why don't you give that to the court reporter to
6 mark.

7 A All right.

8 Q And take a moment again to look at this
9 document. This is a letter dated June 4th, 2004.
10 It states, "I am pleased to confirm Terry Harty's
11 offer of employment and your acceptance of a
12 position at Bryman College, Hayward campus."

13 A Uh-huh.

14 Q And then if you look on the second page,
15 there's a signature line for "Accepted by." Is that
16 your signature in the line there?

17 A It is.

18 Q And the date on which this was signed was
19 June 10th, 2004?

20 A That's what this says, yes.

21 Q Okay. And do you recognize this document?

22 A Yes, I do.

23 Q And what is it?

24 A Well, it's giving me an outline of my
25 salary, of course, and the different dates that I

1 was supposed to be trained for specific job
2 descriptions that I was supposed to perform.

3 Q Okay. This document states -- where it
4 says "Start Date" in the margin on the first page,
5 you commenced employment in this position on
6 June 1st, 2004. And the title in that same section
7 says "Director of Admissions."

8 Did you become a director of admissions at
9 Hayward -- at the Hayward campus on June 1st, 2004?

10 A Yes, I did. I think that was the date,
11 but there was some confusion with that specific
12 transfer. It didn't take place properly.

13 Q Okay.

14 A So I'm not sure if that's the correct
15 date.

16 Q Did you start sometime in the month of
17 June in 2004 as the director of admissions at
18 Hayward?

19 A It couldn't have -- it could be that date
20 or it could have been -- I'm sure if it said June, I
21 started in June.

22 Q Okay. In June 2004?

23 A Yes.

24 Q And were you working as an admissions
25 representative in the San Francisco campus up until

1 that time, from 2000 up until that time?

2 A Yes. Yes, I was. Or, yes, I did I should
3 say.

4 Q So I don't think that's quite six years.
5 I think it's more like three years and -- and nine
6 months at San Francisco before you became a director
7 of admissions at Hayward.

8 A Oh, it was more than that.

9 Q Okay. Well, I -- I thought we just talked
10 about you starting to work as an admissions
11 representative in San Francisco --

12 A I was -- I thought you were speaking of
13 when I started employment because I did start in
14 1999.

15 Q Okay.

16 A And then I went into admissions. So...

17 Q All I'm trying to do is understand how
18 long you were an admissions representative in San
19 Francisco before you became the director of
20 admissions at Hayward.

21 A Uh-huh. Yeah. Well, that's from 2000 --
22 let's see. 2000 to 2004, maybe. Because I was a
23 student at University of Phoenix and I was an
24 admissions rep the whole time I was going to school
25 from when I started with my B.S. to when I finished

1 my courses, and my doctoral courses.

2 Q Okay.

3 A I was an admissions rep during that time.
4 I was going to school and working at Bryman at the
5 same time.

6 Q Okay.

7 A So that's how I was gauging how long I
8 worked there. And then I went to Hayward.

9 Q Okay.

10 A Okay. For a short period of time.

11 Q Just focusing on your stint as an
12 admissions representative in San Francisco, that was
13 from August of 2000 until about the end of May 2004;
14 is that right?

15 A Uh-huh. Yes, something like that.
16 Uh-huh.

17 Q All right. And again, just focusing on
18 when you first started in San Francisco as a campus
19 admissions representative, how were you compensated?

20 A Uh-huh. As a campus rep?

21 Q Uh-huh.

22 A Well, I was salaried. I was a salaried
23 employee.

24 Q Okay. And what was your starting salary?

25 A I think it was on this page right here

1 (indicating). It said 38-.

2 Q Are you referring to what we've marked as
3 Exhibit 2?

4 A This one, yeah, something like that.
5 Yeah, right here (indicating).

6 Q Okay. And the first paragraph says -- in
7 the last sentence of the first paragraph it says,
8 "As we discussed, your beginning salary is \$38,400."

9 A Uh-huh, yes.

10 Q Is that consistent with what you recall?

11 A Yes, it is.

12 Q And was there a compensation plan that
13 governed your employment as a campus admissions
14 representative?

15 A Compensation plan would be like how much I
16 was receiving or --

17 Q Well, was there any plan that told you
18 what you would have to do to be eligible for a
19 promotion or for a raise?

20 A In writing? There might have -- not at
21 that time. There might have been something that
22 came up later.

23 Q Uh-huh.

24 A Okay.

25 Q Yeah, I'm focusing just on when you were

1 hired. Did you ever --

2 A Well, this is what I received when I went
3 in there, was this letter here.

4 Q Okay. And did you --

5 A There was no compensation plan that came
6 with this.

7 Q Okay.

8 A That I recall.

9 Q If you look at the second-to-last
10 paragraph in Exhibit 2 that you were just looking
11 at, the second-to-last sentence of that -- of that
12 paragraph says, "You will not be eligible for merit
13 increase consideration until October 1st, 2001" --

14 A Uh-huh.

15 Q -- "at which time you will be reviewed
16 again.

17 "Admissions representatives will be
18 reviewed for Meritorious Performance in accordance
19 with the Meritorious Performance Compensation Plan,
20 which will be given to you on your first day of
21 employment."

22 Do you see that?

23 A Yes, I do.

24 Q And do you recall getting a meritorious
25 performance compensation plan on your first day of

1 employment?

2 A No, I don't. I don't recall receiving
3 that, but -- I recall receiving it later maybe, but
4 not on this.

5 Q Okay.

6 A Because I was given so many papers. It
7 could have been there, but I don't remember it.

8 MS. YOUNG: Okay. Let me show you a document
9 that was produced to us by your attorney. We'll
10 mark this as Exhibit 4.

11 (Defendants' Exhibit 4 was marked for
12 identification by the deposition officer and is
13 bound under separate cover.)

14 THE WITNESS: Thanks.

15 BY MS. YOUNG:

16 Q If you'd take a moment to review this.

17 MS. YOUNG: For the record, this document is
18 titled "Corinthian Schools, Inc. Campus Based
19 Admissions Representative Compensation Plan,
20 Effective October 1st, 1998."

21 Q And on the second page of this document,
22 again, there are some signature lines. Is that your
23 signature at the bottom of the document?

24 A Yes, it is.

25 Q And this document says, "Received,

1 acknowledged and agreed to this 10th day of August,
2 2000."

3 Do you see that?

4 A Yes, I do.

5 Q Did you receive this document on the 10th
6 day of August 2000?

7 A As far as I know, it was -- I signed it
8 the 10th.

9 Q And -- and this was produced to us by your
10 attorney. So is this something that you maintained
11 in your own file?

12 A Probably. Sometimes things were moving so
13 fast, I might not have signed it on that date, but I
14 used that date.

15 Q Okay. Do you see on page 2 there's a
16 heading B, "Promotion Criteria"?

17 A Yes, I do.

18 Q And that makes reference to "the
19 achievement of the performance criteria outlined in
20 the enclosed promotional guidelines."

21 Do you see that at the end of that
22 paragraph?

23 A I see that.

24 Q Did you also receive the promotional
25 guidelines that this paragraph references?

1 A Probably. I'm sure I must have.

2 Q Do you know what they were sitting here
3 today?

4 A I'm not sure. Not at this time. I don't
5 remember what they were.

6 Q When you were hired as an admissions
7 representative in 2000, were you given any other
8 documents that explained how you would be
9 compensated or when you would be eligible for a
10 promotion or a -- or a raise other than what we've
11 discussed?

12 A Not at that time. I have to say that.

13 Q Okay. And when you were hired as an
14 admissions representative in 2000, did you discuss
15 with anybody at the school how you would be
16 compensated?

17 A Compensated for enrollments or --

18 Q For your -- for your work there.

19 A Well, I discussed that with the director
20 I'm sure.

21 Q Okay. Do you recall the substance of that
22 discussion?

23 A Let's see. Not at this time. I don't
24 recall that.

25 Q Did you discuss with anyone at the school

1 what you would have to do -- and again, this is
2 focusing on the time when you were hired in August
3 of 2000.

4 Did you discuss with anyone at the school
5 in August of 2000 what you would have to do to be
6 eligible for a promotion or a raise?

7 A I'm sure I must have because I was told
8 that I needed to enroll students.

9 Q Okay.

10 A And I was hired to enroll students and
11 that's what I was supposed to do.

12 Q Who told you you needed to enroll
13 students?

14 A The director. Everyone knew you get hired
15 to enroll students. If you don't enroll students,
16 you get fired. That was the general conversation in
17 the admissions department.

18 Q Okay. I want to understand exactly what
19 the conversation was about. So is your
20 understanding that you needed to hire -- so -- so
21 you understood that you would be fired if you didn't
22 enroll students?

23 A Yeah, if you didn't --

24 MR. LEVY: Objection to form.

25 THE WITNESS: In other words -- I'm sorry.

1 MR. LEVY: Objection to form. It was just a
2 little confusing.

3 THE WITNESS: Well, everybody knew if you
4 didn't enroll students and meet your quotas, you
5 were out of there.

6 BY MS. YOUNG:

7 Q Okay.

8 A That was the general consensus in the
9 admissions department.

10 Q And what was --

11 A So I got busy.

12 Q What was the basis for that consensus?
13 Why did you believe that?

14 A Because of what was happening around me
15 and what I was doing.

16 Q Okay. Tell me what that was.

17 A I was recruiting students, getting them to
18 come to school and going by my leads that the
19 director gave me, leads -- he gave me specific
20 leads. And I had to transform the leads into
21 interviews and interviews into enrollments,
22 conversion rates. And I was responsible for doing
23 that.

24 That was my responsibility as an admission
25 rep -- admissions rep. Leads to interviews,

1 interview -- interviews to enrollments, enrollments
2 to starts.

3 Q Okay. So we started off by talking about
4 whether you discussed with anyone what you were
5 required to do in order to get a promotion or a
6 raise.

7 Did you have a conversation with anyone
8 when you were hired at the school --

9 A Uh-huh.

10 Q -- in 2000 about what you had to do to get
11 a promotion or a raise?

12 A I don't recall having specific
13 discussions. I was given paperwork to read and told
14 by the director on many different occasions what I
15 had to do, but I don't remember the exact
16 conversations. But I know that it was understood.
17 It was understood that you had to get enrollments
18 and -- and keep your numbers up.

19 Q Okay. You said you were told by the
20 director on many occasions about what you had to do.

21 Did you mean you were told by the director
22 on many occasions about what you had to do in order
23 to do your job or in order to get a promotion or a
24 raise?

25 A Well, that's the same thing, isn't it? Do

1 my job and get a promotion.

2 Q Did the -- did your director specifically
3 tell you what you had to do in order to get a
4 promotion or a raise or is that something you were
5 just implying from what she said or he said?

6 A No, I wasn't implying anything. The
7 director was circling the admissions department all
8 the time to make sure that we converted our leads
9 into interviews.

10 Q Yeah, I understand that your job was to
11 recruit students and that your director was trying
12 to make sure you did that.

13 A Okay.

14 Q What I'm trying to understand is what
15 specifically he -- it was a "he"; right?

16 A Uh-huh.

17 Q -- what specifically he said to you, to
18 the extent he said anything --

19 A Uh-huh.

20 Q -- about how recruiting students would
21 translate into getting a promotion or a raise.

22 MR. LEVY: Objection; form.

23 THE WITNESS: Okay. Let me see how I can word
24 this. I knew that I had to enroll students to get a
25 raise if I wanted one, but I don't know if he

1 specifically said that in our conversation, you
2 know.

3 That's what you're getting at; right?

4 BY MS. YOUNG:

5 Q Yeah. I'm trying to understand how you --
6 what made you know that you had to enroll students
7 in order to get a raise?

8 A The admissions environment made me know
9 that and the director of education, everything that
10 was happening at school made me know that.

11 Q Did anyone specifically tell you, "You
12 have to enroll a certain number of students to get a
13 raise"?

14 A Yes, the director would tell me that and
15 also the president, Mr. Plant, would tell me that,
16 and other admissions reps would tell me that.

17 Q So the director told you you had to enroll
18 students to get a raise?

19 A Uh-huh.

20 Q The director's name was?

21 A Cary Kaplan.

22 Q You say the president told you you would
23 have to enroll students to get a raise?

24 A The president told me that.

25 Q And the president's name was?

1 A And Jim Martin told me that.

2 Q Back up. The president's name was?

3 A Mr. Plant. At that particular time when I
4 was there it was Mr. Plant.

5 And Jim Martin would come and we would
6 have admissions meetings and -- and they would go
7 over the script with us and tell us what we had to
8 do to increase our numbers.

9 Q Who is Jim Martin?

10 A Well, at that time he was vice president
11 of marketing and sales.

12 Q You said other admissions representatives
13 would say you had to enroll students to get a raise?

14 A Yeah, people that had been working there
15 for a long time before I started.

16 Q Who were they?

17 A Who were those people?

18 Q Who told you -- who were the admissions
19 representatives who told you, "You have to enroll
20 students to get a raise"?

21 A Well, the people were -- that were working
22 there at that time. I'm sure they're not there now.

23 Q Do you recall any of their names?

24 A Yes, I recall their names.

25 Would you like for me to give them to you?

1 Q I would.

2 A Estella Aranas, Jan Dixon, Steve Aranas
3 (sic). Let's see. I can remember some other people
4 that were in that department at that time. Katie
5 Aspen, Daniel Vargas.

6 You need more?

7 Q I want the names of everybody you can
8 remember who told you --

9 A Okay. Well, that's it.

10 Q Just a minute.

11 -- who told you you have to enroll
12 students to get a raise.

13 A Well, they didn't say, "You have to enroll
14 students to get a raise." They said, "You have to
15 enroll students to keep your job." Now, if you kept
16 your job, you could get a raise.

17 Q So just so I'm clear --

18 A Uh-huh.

19 Q -- these admissions representatives you
20 just identified --

21 A Uh-huh.

22 Q -- none of them said to you, "You have to
23 enroll students to get a raise"; is that correct?

24 A Well, they all said that. People talked
25 in the admissions department. Everybody talked

1 about what you had to do to keep your job. And that
2 was part of the conversation that everybody knew and
3 everybody talked about and everybody was pressured
4 about.

5 Q I just -- I just want to make sure that
6 we're clear on --

7 A Uh-huh.

8 Q -- the difference between getting a raise
9 and being fired; okay?

10 A Okay.

11 Q So was the communication to you, "You need
12 to enroll students to get your job"?

13 A To keep your job.

14 Q To keep your job?

15 A Yeah.

16 Q Okay.

17 A Because if you didn't have your job, you
18 couldn't get a raise, of course.

19 Q Okay. But did anyone say to you, "You
20 need to enroll students in order to get a raise"
21 without talking about whether you needed to keep it
22 -- do it to keep your job?

23 A Well, the bottom line was if you enrolled
24 X amount of students, you got a raise. That was the
25 bottom line of that conversation.

1 Now, what don't you understand? Maybe I
2 could make you -- clear it up.

3 Q Well, I'm trying -- I'm trying to
4 understand where -- how you personally got to that
5 bottom line.

6 Is that something that you --

7 A I got there from working in admissions and
8 being in the daily routine of the job.

9 Q Okay. So you arrived at the bottom line
10 based on what you personally had to do in the job;
11 correct?

12 A That's right.

13 Q Which was to enroll students?

14 A Recruit them, enroll them, test them.

15 Q And your job -- okay.

16 A Let them get -- meet with financial aid
17 and start to school. That was what I had to do.

18 Q And you also arrived at the bottom line
19 because people talked about you would get fired if
20 you didn't enroll students?

21 A Well, people were getting fired. I was --
22 I saw what was happening. I saw exactly what was
23 happening. In other words, I was able to put it all
24 together in my head about what I needed to do for
25 myself to stay employed. And I got that from other

1 admissions reps, admissions reps from other schools,
2 you know, talking on the phone, observing people and
3 listening to conversations.

4 Q Okay. But -- but the conversations you
5 were listening to that caused you to conclude --

6 A Uh-huh.

7 Q -- that you needed to enroll students to
8 get a raise were conversations about you could get
9 fired if you don't enroll enough people?

10 A Yeah, and I saw people getting fired who
11 weren't doing it.

12 Q Were there any other types of
13 conversations that led you to believe that you had
14 to enroll students in order to get a raise?

15 MR. LEVY: Objection; form.

16 THE WITNESS: Well, I don't remember any. That
17 was enough. I didn't, you know -- I was in
18 admissions and I was doing what I had to do for my
19 spot in the cubby hole. And that's how I performed
20 like that. I didn't really talk to other people,
21 you know.

22 I heard conversations when I was working
23 there. I just did my job and I enrolled students
24 and recruited them. I mostly talked to my students
25 and I saw what was happening in the department.

1 BY MS. YOUNG:

2 Q And again, what you saw was happening was
3 people were getting fired if they didn't enroll
4 enough students; right?

5 A Yes, ma'am.

6 Q Okay. And again, this is --

7 A And I got fired for not meeting my numbers
8 when I went to Hayward. So -- and then I got hired
9 again and then fired again for not meeting my
10 numbers.

11 Q Okay.

12 A So if you didn't meet your numbers,
13 basically, the bottom line is you get fired.
14 They're not going to pay you to not enroll students.

15 Q Uh-huh.

16 A That was the general consensus in that
17 department.

18 Q Okay.

19 A Okay.

20 Q And we'll talk about all of that later.
21 I -- I just want to keep focusing on your -- your
22 first round of employment in San Francisco from 2000
23 to 2004; okay?

24 A Okay. Uh-huh.

25 Q So other than the documents that we've

1 Q Okay. And the 2000 date is the correct
2 date; is that right?

3 A I think it is because that's this date
4 here. This says 10th and that says the 14th, but
5 like I said, things were misconstrued sometimes
6 there at that campus. And sometimes I would get
7 papers and I wouldn't even sign them until a month
8 later maybe. I don't know. It wasn't necessarily
9 always on the date I got it.

10 Q Okay. But to the best of your
11 recollection, you started working as an admissions
12 representative at the San Francisco campus in August
13 of 2000?

14 A August -- because my hire date was 1999,
15 November. So I was a proctor for nine months and I
16 went into admissions that August.

17 Q Okay.

18 A So that would make it 2000.

19 Q Okay. Now, I think we looked earlier at a
20 compensation plan --

21 A I don't know why that was '01. I'm not
22 sure.

23 Q Okay.

24 A Okay.

25 Q I think we looked earlier at a

1 compensation plan that you signed when you first
2 started as a campus admissions representative in San
3 Francisco.

4 Do you recall that?

5 A Excuse me. One of these documents
6 (indicating)?

7 Q I think it was what we marked as
8 Exhibit 4.

9 A Okay. That's this -- that's this one.
10 2000.

11 Q Okay.

12 A Uh-huh.

13 Q And we now have in front of us a
14 compensation plan that you've signed in November of
15 2001.

16 Do you --

17 A Which exhibit is that?

18 Q Exhibit 5.

19 A Okay. This one. Okay.

20 Q Why did you sign a new compensation plan?

21 MR. LEVY: When?

22 BY MS. YOUNG:

23 Q In 2001.

24 A I don't recall. I don't know why. It's
25 signed right here. I don't know why this happened.

1 Q Okay. Before you signed this document,
2 did you go over it with anyone else?

3 A I don't recall.

4 Q Did anyone tell you that the school
5 doesn't actually follow this plan?

6 A Why would I be signing it and they give it
7 to me if they don't follow it? I don't understand
8 the question.

9 Q So no- -- nobody told you that "Here's the
10 plan, but we don't actually follow this plan," did
11 they?

12 A I don't remember anybody telling me that,
13 but it probably happened because they were always
14 saying something that might not happen sometimes,
15 you know.

16 Q It probably happened, but you don't know
17 if, in fact, it did happen, do you?

18 A Are you speaking of this document here or
19 just things in general?

20 Q No, I'm speaking about my question to you.

21 A Okay.

22 Q Which was did anyone tell you, "Here's the
23 plan, but we don't actually follow it"?

24 MR. LEVY: Objection to form.

25 THE WITNESS: Nobody told me that. I don't

1 recall anyone telling me that.

2 BY MS. YOUNG:

3 Q Let's look at the document within here
4 that starts -- it's actually page 4 of the exhibit.
5 The title of it is "Minimum Standards of
6 Performance."

7 A The one you just gave me?

8 Q Correct. It's what we've marked as
9 Exhibit 5.

10 A I don't see a page 4.

11 Q It's not numbered as page 4, but it is the
12 fourth page in the document.

13 A Okay.

14 Q And the title on it is "Minimum Standards
15 of Performance." That's it (indicating).

16 A Okay.

17 Q Okay. Are you with me?

18 A I'm with you.

19 Q Okay. What's your understanding of what
20 this document is?

21 A Well, it looks like what I was supposed to
22 do as an admissions rep.

23 Q Okay.

24 A Take all inquiry calls, return inquiry
25 calls. That's what I was supposed to do. It takes

1 -- it looks like that to me, what I -- what my
2 duties were.

3 Q Okay. And there's a list of 18 things
4 here on this document.

5 A Uh-huh, yes, I see it.

6 Q Were you supposed to do all those 18
7 things as an admissions representative?

8 A Probably, which was a lot.

9 Q Uh-huh. So let's just talk about a couple
10 of them. The first one is "Take all inquiry calls
11 from all potential students interested in knowing or
12 receiving information about the programs, including
13 entrance requirements, curricula and academic
14 standards."

15 A Uh-huh.

16 Q Was that one of the requirements of your
17 job?

18 A Yes.

19 Q Did you strive to do that?

20 A I strived to do everything that's on this
21 list.

22 Q Okay. And were your calls monitored, your
23 phone calls with prospective students, were they
24 monitored by your director of admissions?

25 A Sometimes and they would tell us that it

1 was monitored by corporate.

2 Q Okay. And what was your understanding of
3 the purpose of having those calls monitored?

4 A I guess they wanted to make sure we were
5 doing our job. I don't know. I never discussed
6 that with anyone.

7 Q Did you understand that your performance
8 was being evaluated based on how you were
9 communicating with the prospective students?

10 A Yes.

11 Q And that was one of the factors that your
12 director of admissions was looking at?

13 A All the time.

14 Q When you were doing your job; right?

15 A Yes, uh-huh.

16 Q No. 2 says, "Return inquiry calls promptly
17 to all potential students and give accurate
18 information about the programs, including entrance
19 requirements, curricula and academic standards."

20 A Yes.

21 Q And that was another responsibility in
22 your job?

23 A Yes.

24 Q And you tried to do that; right?

25 A Yes.

1 Q And this meant, among other things, noting
2 how -- giving accurate information to students?

3 A Giving as accurate as it was given to me.

4 Q Okay. And was that important to you, to
5 make sure students got accurate information?

6 A It was very important to me because I was
7 a student myself and I didn't want to misinform
8 anyone.

9 Q Uh-huh, of course. And -- and did you
10 understand that your director of admissions was
11 monitoring you to see that you were giving accurate
12 information to students?

13 A Yes, I sat right across from his office.
14 He could hear me talking.

15 Q And you understood that he would be
16 evaluating your performance in part based on whether
17 you were giving accurate information to people; is
18 that right?

19 A That was probably his job, to monitor me
20 on that, yes.

21 Q And you understood that that was his job;
22 right?

23 A Uh-huh. Yes, I did.

24 Q No. 3 is "Accurately classify all
25 inquiries by the appropriate media source and

1 account for all inquiries."

2 Do you see that?

3 A Yes, I do.

4 Q And that -- that again was part of your
5 responsibilities; correct?

6 A Yes.

7 Q Okay. And you tried to do that in your
8 job?

9 A Yes, I did.

10 Q And was it your understanding that your
11 director was monitoring your performance to see if
12 you accurately classified all inquiries that came
13 in?

14 A Yes, he would do that through the flash
15 sheets.

16 Q Okay. And "classify all inquiries by the
17 appropriate media source," what does that mean?
18 What do you understand that to mean?

19 A Which one is that? No. 4?

20 Q It's No. 3.

21 A No. 3. That meant that -- the media
22 source would be the zip code from all the leads that
23 I received.

24 Q Okay.

25 A It would have a zip code on it. So I

1 would organize those leads in zip codes when I would
2 call my students.

3 Q Okay.

4 A I believe that's what that means.

5 Q Okay. And I'm not going to go through all
6 of these, but just to touch on a couple of other
7 ones.

8 No. 5, "Comply with governmental
9 regulations and standards of accreditation as they
10 relate to enrolling students."

11 Do you see that?

12 A Yes, I do.

13 Q And that was part of your job
14 responsibilities as an admissions representative?

15 A Yes, it was.

16 Q And did you understand that your
17 performance was being evaluated in part by whether
18 you were complying with the governmental regulations
19 and standards of accreditation as they relate to
20 enrolling students?

21 A Yes, because I explained all that to my
22 students.

23 Q Okay. Another thing on here was -- just
24 take a look at No. 14 and No. 15. They're kind of
25 related. "Ensure that all pre-start paperwork is

1 completed."

2 That was part of your responsibilities?

3 A Yes.

4 Q And you tried to do that?

5 A Yes.

6 Q And you understood that your performance
7 would be evaluated based in part on whether your
8 prestart paperwork was complete; correct?

9 A Correct.

10 Q And same thing with No. 15, "Keep all
11 required reports current and accurate"?

12 A I did all those things, yes, I did.

13 Q And you understood that your performance
14 was being evaluated in part on whether you kept
15 required reports current and accurate?

16 A Yes, I suppose that's what Cary did
17 because I didn't -- you know, he had his own rules
18 for his evaluations on everybody in the department.

19 Q Okay. Say that one more time.

20 A You know, he -- he evaluated all of his
21 admissions reps. So I'm sure he had his own
22 evaluation criteria.

23 Q Do you know what his evaluation criteria
24 were?

25 A No, I never had a conversation with him

1 about it, but he expected high standards. I know
2 that.

3 Q Uh-huh.

4 A That's what he was getting from me.

5 Q Okay.

6 A Maybe he went by this list. I don't know
7 anything about that.

8 Q Okay.

9 Again, I'm so sorry.

10 THE VIDEOGRAPHER: If this is a good time, I'll
11 switch the tapes over now.

12 MS. YOUNG: Yes. Off the record.

13 THE VIDEOGRAPHER: The video deposition is now
14 going off record at 10:42 a.m. This will also
15 conclude video No. 1 in today's deposition.

16 (A recess was taken from 10:42 a.m.
17 to 10:51 a.m.)

18 THE VIDEOGRAPHER: The video deposition of
19 Nyoka J. Lee, Volume No. 1, is returning to record
20 at 10:51 a.m. This will also begin video No. 2 in
21 today's deposition.

22 The location is still 6 Hutton Centre
23 Drive, Fourth Floor, in Santa Ana, California. The
24 date is still Monday, December 17th, 2012.

25 And my name is Ali Saheb with Dean Jones

1 Attorney Video Services in Los Angeles and
2 Santa Ana, California.

3 BY MS. YOUNG:

4 Q Ms. Lee, I would remind you you're still
5 under oath. Do you understand that?

6 A Yes, I do.

7 Q And is there anything you would like to
8 change about your testimony you've given today?

9 MR. LEVY: No, there's nothing she would like
10 to change.

11 MS. YOUNG: I'm asking the witness. I would
12 like an answer from the witness.

13 THE WITNESS: No.

14 BY MS. YOUNG:

15 Q Okay. And just remember, our court
16 reporter is trying to take everything down.

17 A Uh-huh. Yes.

18 Q And sometimes you've been jumping in
19 before I finish my question. So please make an
20 effort to wait for me to finish completely before
21 you answer; okay?

22 A Yes.

23 MS. YOUNG: Okay. I'm handing you what we're
24 going to mark as Exhibit 6.

25 (Defendants' Exhibit 6 was marked for

1 identification by the deposition officer and is
2 bound under separate cover.)

3 BY MS. YOUNG:

4 Q Now, this is a document titled
5 "Confidential Employee Performance Review." You see
6 on the last page where there's a line for a
7 signature, employ- -- for "Employee Acknowledgment."

8 Is that your signature?

9 A Yes, it is.

10 Q And it's dated November 19, 2001?

11 A Yes, it is.

12 Q And beneath that it says, "Review of
13 Performance Discussion Summary and Employee
14 Comments."

15 Do you see that?

16 A Yes, I do.

17 Q Do you recognize the signature beneath
18 that line?

19 A Yes, it looks like Mr. Plant's signature.

20 Q Okay. And there are a couple of other
21 signatures on the same page in the box with section
22 Roman numeral VI. One is over a line for
23 "Supervisor."

24 Do you see that?

25 A Yes.